

MONGOLIAN FOUNDATION FOR OPEN SOCIETY
(SOROS FOUNDATION)

**ACCESS TO JUSTICE;
ACCESS TO A FREE LEGAL AID
NEEDS ASSESSMENT REPORT
MONGOLIA**

**ULAANBAATAR
2002**

CONTEXT

1. FOREWORD

2. ACCESS TO LEGAL ASSISTANCE

3. ACCESS TO JUDICIAL SYSTEM FOR THE INDIGENT IN CRIMINAL CASES

1. Procedure for granting legal aid
2. Legal aid for victims of crimes

4. ACCESS TO THE JUDICIAL SYSTEM FOR THE INDIGENT IN CIVIL CASES

5. PUBLIC LAW: ACCESS TO THE JUDICIAL SYSTEM FOR THE INDIGENT

1. Constitutional case
2. Administrative case
3. International law

6. ORGANIZATION OF THE SYSTEM FOR PROVISION OF LEGAL ASSISTANCE

1. Special state body authorized to administer the legal aid system
2. Role of the bar association in the administration of the legal aid system
4. Role of the courts
5. The role of the prosecution and the police
6. State models of organization of the provision of legal aid
7. Non-Governmental Mechanisms

7. FUNDING A FREE LEGAL ASSISTANCE

8. AVAILABILITY OF ADVOCATES AND QUALITY OF A LEGAL ASSISTANCE

9. LEGAL AID TO THE VULNERABLE GROUPS AND WOMEN

10. CONCLUSION & RECOMMENDATIONS

Research team ;

M.Ichinnorov	Head, Lawyer's Center for supporting Legal reform
B.Tseveen	Senior officer in charge of advocacy, Ministry of Justice and Home Affairs
B.Orosoo	Officer, Globe International NGO

FOREWORD

The Constitution of Mongolia declares the right to appeal to the court for protection, to be compensated for the damage illegally caused by others; not to testify against oneself, one's family, parents, or children; to defense; to receive legal assistance; to have evidence examined; to fair trial. The right to legal assistance is an important right that ensures the proper implementation and exercise of these rights by citizens. It is impossible to monitor whether these rights are being exercised without the right for legal assistance.

The right to legal assistance is guaranteed in law in the following way. Article 55 of the Constitution declares the rights of the defendant to defense and professional legal assistance, while the Criminal Code provides involvement of an advocate from the moment of being accused of a crime, arrest, detention, interrogation and states the right to choose a lawyer directly by himself or upon his approval, through a family member or a legal representative. If there is no advocate, then the inquirer, investigator, prosecutor or a court shall, upon the request by a suspect, accused or defendant, ensure participation of an advocate and it is prohibited to suggest a certain advocate by name. Also, laws require advocate's mandatory involvement in certain cases.

The Law on Courts and the Law on Advocacy have provided the comprehensive regulations for the above principles that are not far away from the international standards. However, the main indicator for the implementation of the right to legal assistance is whether the poor and indigent people have access to the legal assistance.

The law on Advocacy mentions that the right to legal assistance shall be exercised by financing the legal assistance for the indigent from the state budget and appoints the relevant authority to issue the regulations on financing and accounting of expenses.

However, although certain funding is budgeted by the State for the legal assistance for the indigent, the practice of timely financing of the beneficiaries has been much unsatisfactory irrespective of whether the Ministry of Justice and Home Affairs manage by courts, General Council of Courts, or the funds. Conclusion is that the root of the problem is the system of legal aid.

In 2002 legislators have amended the new law on Advocacy that requires every advocate to annually provide pro bono legal assistance to at least two indigent persons. This can be considered as a step forward. However, it is not the solution.

Summing the above, the facts of organizational incapability or unwillingness show the need for definite and positive approaches to the issue such as providing the poor and indigent people with permanent lawyers with the status of the State (public defenders).

ACCESS TO LEGAL ASSISTANCE

As a result of the democratic revolution of 1990, the totalitarian regime had fallen in Mongolia and the process for establishing civil society that honors the human rights and freedoms had started. The fundamental rights and freedoms had been declared in the new Constitution of 1992, which is premised on the principles of democracy.

The 1992 Constitution guarantees the right to legal assistance in the Article 16, sub-paragraph 14: “the right to appeal to the court for protection, to defense; to receive legal assistance”; in the Article 55: “The accused has a right to defense. The accused is accorded legal assistance according to law and at his or her request.”

The access to the legal aid by the indigent is an important indicator of the human rights situation in a country.

The growth of poor population in Mongolia between 1995 and 1998 has been shown in a report.

	Location	The poor (thousand)		Growth of the poor	
		1995	1998	Thousand	Percent
1.	Urban areas	471	493.4	22.4	4.8
2.	2.1. Ulaanbaatar	214	221.6	7.6	3.6
3.	3.1. Aimag center	257	271.8	14.8	5.8
4.	Rural areas	350	369.9	19.9	5.7
	Total	828	849.8	21.8	2.6

The table above shows that in 1998 there were 849, 8 thousand indigent people in Mongolia who were eligible for free legal aid.

Enjoyment of the rights provided to all citizen of Mongolia by the Constitution, such as the right to appeal to the court for protection, to be compensated for the damage illegally caused by others; not to testify against oneself, one's family, parents, or children; to defense; to receive legal assistance; to have evidence examined; to fair trial, to appeal against a court decision; to seek pardon is heavily dependant on how much free legal assistance is provided to the indigent. Therefore, it can be said that the right of the indigent to free legal aid is the “fundamental right” for other rights.

Article 20 of the Law on Courts and Article 17 of the Law on Advocacy both contain provisions on guarantees for free legal assistance to citizens. Article 20, 45, 46 of the Criminal Procedure Code and Article 5 of the Law on Advocacy on the right of the suspect, the accused and the defendant to freely choose an advocate, receive legal assistance and to represent themselves in criminal prosecution process, indicate that inquiry and investigation office, advocates’ organization and the court are responsible for implementing these provisions whilst the prosecutor’s office is in charge of monitoring the implementation.

The Law on Courts (2002) and the Law on Advocacy (2002) set forth the rights of the indigent to legal assistance funded by the state. Article 21 of the Law on Advocacy reads, “The attorney fees of the indigent shall be funded out of the state budget. This funding shall be allocated to the Association

of Mongolian Advocates and the regulation on the funding of and accounting for the attorney fees shall be passed and monitored by the [Justice and Home Affairs Minister of Mongolia]”. However, the regulation mentioned in the above article is yet to be issued leaving the old regulation “Covering the lawyer’s fees of the indigent from the budget and its accounting” from May 4, 1995 in force. The latter regulation was passed jointly by the Minister of Justice, Minister of Finance and the Minister of Demographic Policy and Labor (numbered as No.43/76/62).

The regulation covers the following:

1. Definition of indigence, main criteria, qualifications for an indigent client.
2. Drafting the budget for funding the indigent clients, including the funding in the court budget, presentation of the budget to the State Great Khural (Parliament), distribution of the funds to the local courts.
3. The inquirer, investigator or a judge, upon confirmation by a Governor of soum, district, bagh or horoo of the insolvency of an individual, fill out and submit a form for the legal fees for an indigent client to a court accountant, who then pays the fee to the advocate of the client at the end of each month.

The regulation defines an indigent person as someone accused of a crime, whose family income is below the minimum wage set by the Government and who lives on a limited consumption constantly. The soum, district, bagh or horoo governor should confirm particular citizen’s indigence and apply Article 7 of the Regulation “Cumulating and utilization of the funds for the poor and low-income families and individuals” set by joint decree of the Minister of Demographic Policy and Labor and the Minister of Finance No. 156/19 from 1993.

Inquirer, investigator or judge, upon the confirmation by a Governor of soum, district, bagh or horoo, shall fill out the form with the State registration number to cover the advocate’s fees for the indigent client from the state budget and provide it to the accountant in charge of courts.

The regulation sets further that the accountant, upon the receipt of the form, will pay the amount of the fee in cash to the advocate who represented the indigent client at the end of the month.

But due to low performance of the aimag and Ulaanbaatar court administrations and local advocates’ councils, the funds do not reach the designated advocates. Eventually, the indigent clients fall short of the quality legal aid during investigation and court stages.

The issue of financing the free legal aid for the indigent is a crucial issue of protection of rights of the indigent for legal representation. The regulation (in the article 4, subparagraph 1) gives restriction in increasing the fixed fee rates, but enables the head of the advocates’ council of local aimag or city to categorize the legal aid fee rates for the poor or the extreme poor.

It is clear what quality the legal aid and its effectiveness there will be if the fees are compensated not on the volume, but on a recommendation basis.

These facts demand for increase of the recommended fee rates or pay the fee based on the volume of the work done. The 56% of the surveyed 50 judges and prosecutors believe that the fixed fee rates do not match the reality of life.

Neither governmental nor non-governmental organizations have any reliable research data on the provision of legal assistance to the poor in the last five years. The right to legal assistance has been briefly addressed in the 2000 Human Rights Baseline Report produced by the HURISTMON project. According to the data issued by the Association upon a request from the National Commission on Human Rights to provide them with data on the number of citizens the Association has provided with

free legal assistance, the capital city advocates' counsel has appointed advocates to 44 citizens based on cases referred to them by the investigation authorities and 52 citizens based on referrals from the court.

Within the framework of the project on the Promotion of Legal Assistance, we distributed, within a short period of time, a questionnaire on rendering free legal assistance to the poor among almost 200 lawyers in the capital city and aimags. A total of 124 lawyers responded, 81 of them from the city and 43 from 10 aimags.

1. 83 lawyers or 66.9% of the respondents replied that the legal provisions on ensuring the right of the poor to free legal assistance are not being implemented in practice.
2. 107 advocates or 86.3% of the respondents replied that besides legal defense, they provide oral and written legal counseling; 90 advocates or 72.6% informed that they assist their clients in drafting legal documents; 63 advocates or 50.8% responded that they represent citizens in front of state agencies.
3. 107 advocates or 86.3% reported that the suspect, the accused, the defendant and the claimant are not able to freely choose their advocates.
4. 51 advocates or 41.1% of the respondents evaluated the quality of legal assistance provided by advocates and the mechanism for evaluating and monitoring the quality of advocate's services are poor; 48 advocates or 38.7% reported that the above are very poor.
5. When asked how the provision of free legal assistance to the poor could be improved, the respondents replied as follows:
 - Create a new permanent position of a government-paid attorney (43 advocates or 40.2% of the respondents)
 - Create a special fund (44 advocates or 41.1%)
 - Require that each advocate provide free legal assistance to the poor twice a year (18 advocates or 16.8%)
 - The current regulations are fine (10 advocates or 9.3%)Note: 17 advocates did not reply to this question, hence the total calculated here are 107).

However, we do not think these figures are realistic as in most cases the probability for lawyers to obtain their payment is very low; hence lawyers generally are not interested in representing and assisting poor citizens. Thus this number is more likely to represent the number of poor citizens that advocates happened to assist rather than a number of poor clients that lawyers agreed to assist for free from the beginning. In the course of this research, we interviewed a number of advocates on this issue and they reported that they do not participate in cases for the poor planning to render free assistance. In few cases, their services have to be free.

Advocates covered in the survey wrote the following suggestions:

1. Have the services to the poor be financed from the State in order not to violate human rights and entrust the Mongolian Association of Advocates with the right and duty of coordinating those funds (11 respondents wrote this).
2. They say now that the salary for the State-sponsored advocate is allocated by the Ministry of Finance and included in the budget by the State Great Khural but the money in effect gets lost in something like the Bermudan Triangle, otherwise there is a substantial amount of money.
3. Citizens can never get any money now from the funds allocated to the courts because it is impossible to compile all the necessary documentation and citizens do not have necessary identification documents (2 respondents).
4. Citizens are not aware that they should inform the advocates' organization that they are unable to pay.
5. Funds are probably allocated for legal assistance to soldiers in the army but this issue is not well regulated.

6. Some funds could be allocated from the Advocates' Responsibility Insurance Fund that is comprised of membership fees.
7. Retired advocates may be mobilized to assist poor citizens.
8. Court rulings should include instructions regarding payments for legal assistance to poor citizens (2 respondents).
9. Given that convicts are often involved in legal cases, budget amounts allocated to aimag advocates' councils should reflect that difference.

The following measures should be taken to solve the issue of the provision of legal assistance to the poor:

1. Create a special Fund:
 - a. The Fund resources should be supervised by the Ministry of Justice and Home Affairs and administered by the Mongolian Association of Advocates.
 - b. The resources of this Fund should only be spent according to an approved regulation to solve the issue of payment for legal assistance on behalf of the poor and fund trainings related to payments of legal assistance for the poor and other relevant activities.
 - c. Unspent amounts from a given year should flow into the next fiscal year.
 - d. The financial section and the Board of Supervisors of the Mongolian Association of Advocates should monitor the spending of the Fund resources.
2. Create a mechanism whereby the heads of aimag and capital city advocates' councils appoint an advocate to provide legal assistance to a poor citizen based on a written document from the aimag or capital city court.
3. Update the tariff for legal services to the poor established in 1995 by the order 44/63 of the Minister of Justice and the Minister of Demographic Policy and Labor, by increasing the amounts by 35-50% based on the degree of severity or lightness of the case.

LEGAL ASSISTANCE TO THE INDIGENT IN CRIMINAL CASES

The right for legal aid is one of the fundamental principles of the criminal procedure and is a legal guarantee for defendant or accused to protect her/his rights and interests in the criminal procedure.¹

The implementation of this right is essential for full enjoying rights granted and for determining whether criminal liability should be imposed with the participation of a professional advocate.

One of the main ways to ensure the human rights is the provision of the right to select an advocate as well as the insurance of access to legal aid.

Article 45 of the previous Criminal Procedure Code provided for participation of an advocate from the moment of arrest. Then, the new Criminal Procedure Code allows participation of an advocate from the moment of declaring somebody a suspect. It yet remains to be seen how the new law is going to be applied. Article 46 of the new Criminal Procedure Code describes the selection of a professional advocate. For example,

1. Choosing of an advocate by the suspect, the accused or the defendant
2. Choosing of an advocate by relatives or legal representative upon the approval by the suspect, the accused or the defendant

¹ Ya. Nyamjav, "involvement of an advocate in the criminal procedure" MAA, "Erh zuin medleg" bulletin, UB, 1997

3. If no advocate has been selected, then the inquirer, investigator, prosecutor or a judge should, upon the request of a suspect, accused, or defendant and ensure participation of an advocate it is prohibited to violate these rights by suggesting a certain advocate by name.
4. If the advocate selected has become unable to represent the client or has been refused by the client, then the right for another advocate is preserved.

The new Criminal Procedure Code (2002) explicitly permits representation of an individual by several defense counsel (Article 39). This permission, however, does not apply to the financially indigent. Moreover, representation by several defense counsels at the same time does not realize in practice, some lawyers and citizens claim. Prohibition of the Code to impose a certain advocate by an investigator, prosecutor or a judge is sometimes overlooked, either. These violations of rights are usually told by those who have been accused and imprisoned. No violation, however, has been documented, appealed and investigated.

Also, Article 13, sup-paragraph 3 of the Law on Advocacy charges an investigator, judge or prosecutor with the duty to ensure appointment of an advocate by the advocates' organization if the beneficiary of the legal aid is unable to represent him/herself or is unable to select an advocate due to health, financial or other respectful reasons.

Article 40 of the Criminal Procedure Code of Mongolia lists the circumstances for mandatory involvement of an advocate. For example, an advocate must participate in investigation or criminal court proceedings if:

1. Defendant is a mute, deaf, blind, and other person who by reason of his/her physical or mental defects is not able to exercise the right to defense him/herself;
2. Defendant is a minor(s);
3. Defendant is a person who does not speak Mongolian language;
4. One of the defendants, who have conflicting interests in the case, has an advocate;
5. To whom death penalty may be applied.

In these circumstances, if the defendant, his/her legal representative or relative or other persons have not requested for an advocate, then the investigator or the court are responsible for securing participation an advocate in the case.

Hence, rights for advocate have been legalized in our laws, thus ensuring ways and forms for obtaining legal aid by involvement of the professional advocate for implementation of the above rights.

Also, Article 380 of the Criminal Procedure Code requires obligatory participation of an advocate for a person who has committed a crime while mentally unable to be responsible for his/her actions, or who has contracted such a mental illness after committing a crime and if such person is deemed to represent a danger to society due to nature of the crime committed or illness. This Code provision existed before in the previous Code, too. However, no research or documentation is available on how the above right of mentally ill people is enjoyed or violated in practice. This may well be an indicator of level of attention and commitment of authorities as well as lawyers to this important right.

Serious violations of the right to an advocate continue to happen at investigation stages. For example, "During the monitoring visit to the Gantskhudag detention center in April of 2001, 80 (eighty) percent of 619 persons under custody in there had no advocates. The survey also revealed that the majority of respondents did not know how to hire an advocate nor could afford one, their families did not know how to hire a lawyer, either, the investigators did not explained the right to an advocate nor how to hire one."²

² Human Rights assessment in Mongolia UB., 2001, pp. 93-94

The study among judges and advocates into insurance of the right to an advocate by law enforcement officials shows that the law enforcement officials oftentimes fail to inform a family member or an attorney of a person detained or influence this person in choosing an advocate³. Below are the results of the questions put to 50 judges and lawyers on exercise of the right to advocate during investigation:

No.	Question	Answer (percent)			
		Yes	Percent	No	Percent
1.	If an advocate participates from the moment of identifying as a suspect	24	49%	25	51%
2.	If the advocate is informed at the moment of arrest or detention	14	29%	35	71%
3	If the detainee is informed of reasons of his/her detention or arrest	36	72%	13	27%
4	If a family member of the detainee is informed of his/her detention or arrest	17	34%	29	59%
5	If a certain advocate is imposed on a person eligible to the right to an advocate	27	55%	22	45%
6	If the right not to testify against oneself or a family member is respected	29	59%	18	36%
7	If the violation of the right to an advocate has been a basis for annulling a valid court decision	16 (13 times)	33%	31	62%

Questions for lawyers on exercise of the right to advocate during court proceeding:

No.	Question	Answer (percent)			
		Yes	Percent	No	Percent
1.	If the right to an advocate is exercised fully	38	77%	11	22%
2.	If the person who has the right to an advocate chooses an advocate him/herself	31	62%	19	38%
3.	If a certain advocate is imposed by name	19	38%	30	60%
4.	If the violation of the right to an advocate has been a basis for annulling a valid court decision	12 (16 times)	24%	35	70%

Part of the reason is 1/ lack of culture of obtaining legal assistance among the overwhelming majority of the public and 2/ quite limited rights of an advocate in criminal proceedings.

With the new Criminal Procedure Code coming into force, our lawyers and judiciary are getting prepared for adversarial process in the courts. In an adversarial hearing, a judge has a relatively neutral position by ensuring an equal opportunity litigation of the parties with the same rights, and a decision based on the arguments set forth by the parties during the trial. Then in an inquisitorial process, a judge has, on the contrary, the main role by examining the evidences and questioning the parties.

In this Code there are several important norms for not just defining the adversarial process, but also for application for adversarial process principles on the trials and creation of adversarial procedures. It reads: "Procedure for trial shall be based on the adversary between the prosecution and defense, who have equal rights. During the hearing, the parties shall have equal rights in examining the evidence, make requests and expressing their opinions on any matter regarding the case". This means that it requires more efforts from the prosecution and defense and the citizens are to take more active involvement.

³ Study report on political and personal rights, Project of Human Rights Strengthening in Mongolia, 2001.

While the priorities of the adversarial process are to have more justice, protection of human rights, ensuring of rehabilitation of the innocent. However, in our situation, the poor legal knowledge of our citizen, limited or no possibilities for getting quality legal aid may result in facing losses. That is why a new and reliable step towards protecting the rights for advocate for the indigent of little or not legal knowledge is a priority.

We have no legal regulations for granting compulsory legal aid as requirement for the indigent. This is crucial in implementing the right for legal aid of the indigent. Generally, it must be a requirement for an indigent to have a lawyer at the inquiry, investigation and trial stages.

Procedure for granting legal aid

The accused person immediately and his family and advocate are informed of the charges – the accused person immediately and the family members and the advocate – within 48 hours following the arrest. At the detention or before interrogation the inquirer or investigator, according to Article 50 of the Criminal Procedure Code, shall explain the right for an advocate described in Article 45, namely, the right for advocate, private meeting with his/her advocate. But implementation of this provision can be considered unsatisfactory. For example, it was reported, “Out of the 1967 persons detained [at the Police Pre-trial Detention Center] during the first 6 months of 2001, the families or advocates of 524 detainees were not informed...”

Due to lack of specific provisions about the procedure of obtaining free legal aid for the indigent in the Code and the unawareness of the “Regulation on covering the lawyer’s fees of the indigent from the budget and its accounting practices” by both the inquirer/investigator and the indigent accused or defendant, the vast majority of the indigent do not use their rights for advocate at the stage of investigation/inquiry.

In the survey above, 83 advocates, or 70.4% of respondents, agree “no practice of providing free legal aid to the indigent is exercised in the judiciary”. In summary, the advocates are unwilling to undertake or are likely to provide low quality legal assistance to the indigent due to fixed fee rates which are constantly devalued against inflation and etc., and very late payment of the fees.

Another inalienable right next to the right for legal representation is the selection of an advocate. 78, or 96.3% of the surveyed advocates, mentioned, that “indigent accused, defendant, plaintiff or detainee do not select their advocate by their choice.”

This is related to unavailability of advocates and limited options for selection of an advocate. Most of the advocates are concentrated in urban areas and are very scattered in the rural. The regulation on “Suggested fee schedule for legal assistance” gives responsibility to appoint advocates for the indigent to the aimag and capital city councils. There are no restrictions on financing the fees for the indigent from the state budget. In other words, the indigent may get as much legal assistance as he wants in that particular year. Also, the indigent are eligible for legal aid in any stage of the criminal procedure.

It is also an important issue of ensuring the right to legal assistance of a prisoner. “Regulation of payment of attorney fees of a prisoner” (issued by the Minister of Justice of Mongolia in 1996) provides for the following payment arrangement of the attorney fees of prisoners: legal aid to prisoners in high security prisons and juvenile prisons as well as to handicapped prisoners are paid by the state budget whereas the legal aid to regular prison inmates is paid from that particular prison. That prison withholds the attorney fees from the salary of the prisoner. Finally, the law does not release an indigent person from the duty to pay the court expenses.

Law on Advocacy lists the following duties of an advocate:

- Give consultation, information and research on legal matter
- Drafting of legal documentation

- Represent at the court, state and administrative organs on civil cases and administrative incidents
- Advocating at the inquiry, investigation and court hearing
- Provide other legal help for the needs of individuals and organizations.

Finally, the new Criminal Procedure Code contains a number of important provisions that provide more guarantees for rights of suspects and defendants to legal assistance and extend the power of the advocates, namely:

- If mandatory participation of a lawyer was required in court proceedings only under the previous Code, now a lawyer must participate in investigation stages of the crime in specific circumstances (Art. 40)
- “If participation of a professional defense counsel is not possible, a suspect, accused, or defendant him/herself may choose a person who does not have impediments to his/her participation in the proceeding as defense counsel” (Art. 38.2). This provision makes it possible for access to legal assistance in remote areas with not enough advocates or in the case of absence of quality professional legal assistance.
- According to Art. 41.3.3 of the Code an advocate has a right “to be present at the interrogation of victims, witnesses and expert witnesses, to put questions to them”. Under the previous Code, an advocate could only be present at the interrogation of victims.
- Also, the right of an advocate “to read the record of the procedural action and to submit written proposal to make corrections in it” is comparatively broader power for an advocate than the one under the previous Code.
- One of the most significant rights of an advocate in the new Code is the right of an advocate to represent his/her client in the judicial detention or arrest hearing.

The above rights extend the rights of an advocate, which were substantially limited under the old Code.

Legal aid for victims of crimes

The issue of legal aid for victims of crimes has been ignored. The damages of the victims of crimes are not fully recovered, yet they suffer severe physical, mental and material damages. “There are 3, 9 thousand crimes committed during the first two months of this year [2002]. However, only 9, 1% of the overall 4 billion MNT damages incurred as a result of these crimes have been compensated.”⁴

As a whole, the Criminal Procedure Code contains not much regarding protection of victims’ rights and interests, however, much emphasis is given to crime solution, investigation, detection of the criminal, imposition of punishment and the protection of the rights of the victims of crimes is not much ensured just like the convict’s or defendant’s eligibility for legal representation. For example, Article 46 mentions the rights for legal representation by defendant and accused only.

The protection of the victims’ rights and interests by providing legal aid must be ensured by the state. The main indicator of the protection of victims’ rights is how the compensations are awarded. As “The regulation on Covering the lawyer’s fees of the indigent from the budget and its accounting practices” defines an indigent client as a person accused of a crime whose income for the family is below the minimum wage set by Government and who, due to this, lives on a limited consumption constantly”, doubt arises as to whether an indigent victim of a crime can get the legal aid.

A victim of a crime, his/her family members or any other close persons suffers enormous physical, emotional and financial damages, which last long, if not forever. In addition, a victim has to incur more costs of having to hire an attorney. Except for few circumstances of obligatory participation of a

⁴ D. Enkhjargal, Director of NWLC, report on “Legal protection of victims of crimes”

lawyer, many individual victims cannot afford an attorney in a case. It is mostly indigent suspects and defendants who are represented by an attorney (funded by the State). This failure of poor victims to have legal assistance stems from unawareness of these people of their right to assistance as well as from failure of law enforcement officials to explain this important right to them. Thus, it is high time serious deficiencies in the right to an advocate of victims were attached due importance and care.

EFFECTIVE ACCESS TO THE JUDICIAL SYSTEM FOR THE INDIGENT IN CIVIL CASES

Citizen and legal persons have right for legal representation for the rights claimed and rights violated and the right for legal representation and the right for legal representation is one of the fundamental rights for the citizens of Mongolia. Constitutional grounds for these rights are sub-paragraph 14 of the Article 16 "...for the self-representation and for legal assistance..." provisions for protection of one's rights and its mechanisms.

These rights have been reflected in the Article 30, subparagraph 1 of the Civil Procedure Code: "A citizen may directly or through a representative be involved in the litigation"; sub-paragraph 2: "Representation may take place as indicated in the law, on voluntary basis or by an agreement".

Both individuals and legal persons enter the civil litigation directly or, through legal representative to protect its rights and interests. Article 5 of the Civil Code provides, that "The parties have rights to identify representatives directly".

Both individuals and legal persons enter the civil litigation directly or, through legal representative to protect its rights and interests (Article 30 of the Civil procedure Code). The Constitution in the Article 16, subparagraph 14 gives protection and guarantees of self-representation in the court hearing by allowing person to "self-advocate". But involvement of a legal representative to protect another's rights and interests is related with implementation of the rights for legal assistance. Civil procedure categorizes representation as 1) set by law, 2) on voluntary basis and 3) by agreement.

Articles 30 and 31 of the define the grounds for legal representation and the persons eligible to represent so:

1. Legal representative, parent, legal guardian or custodian for the persons with no legal capacity or limited capacity;
2. Trustee of the missing person in the litigation to which the latter is a party to;
3. Trustee of an assets of the deceased person in a case the funds have not been accepted by heirs in the litigation to which the latter is a party to.

A legal representative, parent, legal guardian or custodian for the persons with no legal capacity or partially capacity may, on their turn, be represented in the litigation as well. Thus, the above two articles provide for legal framework for exercising and enjoying the right for the legal assistance.

There are certain restrictions for a person to represent another person, which are:

1. Of the age under 18 years;
2. Fully not legally capable
3. A judge, prosecutor or investigator, except for the cases where she/he is a parent, legal guardian or custodian in the litigation. (Civil Procedure Code, Article 35).

In voluntary representation a person with full legal capacity is represented voluntarily by his/her family member or a close relative. Representation by agreement usually involves a professional advocate representing a client on a contractual basis.

Summarizing, the Civil procedure code does not stipulate provisions of legal aid for the poor and indigent in civil litigation.

The indigent have limited possibilities to be represented legally. It is, thus, recommended to broaden the scope of legal representation by law and include special provisions for the legal aid for the indigent.

Citizen and legal persons have rights for legal representation for the rights claimed and rights violated. There is also an understanding of representation by law in the Civil procedure. The scope of this kind of representation extends to those with no or limited legal capacity, missing and deceased persons. Therefore, the legal representation and legal aid for the indigent shall be categorized on voluntary basis or by agreement

Majorities of the people seeking free legal aid are indigent persons in the housing dispute, and are required to leave the premises or with the claim of unfair loss of jobs.

Providing free legal aid for the indigent in civil cases is regulated by the above-mentioned regulation on "Covering the legal aid fees for the indigent from the state budget and its accounting practices". Similar to the criminal case, indigent person, not capable of paying fees to the lawyer, shall inform the court about the need for legal representation and a judge shall inform the local council of advocates with the request for an advocate to represent the person. The indigent person shall obtain proof of indigence from the related soum, district, bagh or horoo governor. Judge shall, upon such confirmation, fill the form for eligibility of the free legal aid to be funded from the state budget, and deliver it to the court accountant.

An advocate for the indigent is appointed by the local aimag or city council of advocates and since there is not regulation for selecting an advocate, it is done fully by the virtue of the council. This shows that there is a violation to the rights of free selection of an advocate.

Advocate provides variety of legal aid services, such as:

- Give consultation, information and research on legal matter, drafting legal documentation, give opinion on such legal documents;
- Represent at the court on civil cases;
- Provide other legal help for the needs of individuals and organizations (writing bylaws, registering corporations)

The indigent are eligible for free legal aid in the civil proceedings (initial and appeal courts). There are no restrictions in laws or in regulations to exercising these rights. However, there is no data on how the indigent use their right and opportunity in the first instance and appellate courts. It can be observed that the rights of the indigent for free legal aid are more limited at the appellate court.

???

Article 53 of the Civil Procedure Code provides waiver for the indigent from proceeding's costs such costs related to transportation, accommodations and meals for the expertise, translators and witnesses, wages and fees, examination, experimenting and identification.

The law relieves an indigent person from payment of a so-called stamp duty, albeit this does not mean guaranteed access for the indigent to legal aid.

PUBLIC LAW: EFFECTIVE ACCESS TO THE JUDICIAL SYSTEM FOR THE INDIGENT

Constitutional cases

The principle of rule of the Constitution gives it supreme power compared to other laws and is considered effective in settling the political disputes between constitutional organizations and powers as well as small disputes between individuals in everyday life.

The embodiment of the principle of respect for the Constitution is the constitutional court. In 1992, by adopting the new Constitution, Mongolia has created the Constitutional Court, namely the Constitutional Tsets. Tsets is to exercise supreme monitoring over and dispute settlement on applying the Constitution. The monitoring by the Tsets is abstract.

The abstract monitoring by Tsets is initiated by the request of certain subjects of power, apart from dispute or controversy. In other words, petitioner, with no regards to whether his/her rights were diminished, initiates the proceeding by one of the few reasons where it is considered that the Constitution has been violated and this restricts the accessibility of the Constitution. The Article 66, subparagraph 2 of the Constitution defines the jurisdiction of the Constitutional Tsets. "Generally, the Constitutional disputes can be categorized as 1) dispute over a legislative act and 2) disputes over certain officials."⁵

The legislation that is subject for Constitutional review by Constitutional Tsets' are 1) Laws passed by State Great Hural 2) other decisions by the State Ih Hural 3) ordinance by the President, 4) other directives of the President 5) Regulation by the Government 6) international treaties by Mongolia 7) Decision of the General Election Committee on a referendum 8) Decision of the General Election Committee on election of the State Great Hural and its members and 9) Decision of the General Election Committee on Presidential election.

The Constitutional Court monitors actions of the following officials, whether they are constitutional: 1) President 2) Speaker of the State Great Hural 3) Members of the State Great Hural 4) Prime Minister 5) Members of the Government (Cabinet), 6) Chief Justice of the Supreme Court and 7) the Prosecutor General.

A citizen may complain to Tsets on its monitoring subjects only, but not on violation of the fundamental rights. In most of the cases, the rights of the indigent are violated or have been treated unequally by officials for the very reason that they are poor. And if an indigent person complains to the Tsets regarding this matter, the Tsets would not accept it, as it does not belong to its jurisdiction.

It's a tragedy that no legal environment has been created for a person to complain to Tsets on his/her fundamental rights' violations, but instead allows complaints on abstract issues, thus making the Constitution not applicable directly. On the other hand, there has been no practice set by regular courts on applying Constitutional provisions in making decisions on cases where human rights were violated. Lawyers argue that Constitution is not a law. A conclusion can be made that we have limited possibilities to make complaints regarding violation of fundamental rights granted by Constitution.⁶

However, the indigent are free to complain to the Constitutional Tsets on issues mentioned in laws and these rights have been preserved by laws, but the Law on Constitutional Tsets (1992) and the Law on Tsets Proceeding (1997) do not contain any regulations over the legal aid to the indigent.

⁵ Treatise to the Constitution of Mongolia., UB 2000, p. 259

⁶ M. Ichinnorov "Human Rights: Constitution of Mongolia, Civil and Civil Procedure Codes and Criminal and Criminal Procedure Codes.

The regulation on “Covering the lawyer’s fees of the indigent from the budget and its accounting practices” regulate only in criminal, civil and administrative cases and it is up to the indigent to cover fees related to complaining to the Tssets.

It is confusing that the indigent have rights for free legal aid in criminal, civil and administrative cases, but in the Constitutional cases.

At the moment, there is no legislation or directive providing legal aid to the indigent in complaining to the constitutional Tssets.

The parties in the Constitutional hearing may be represented by a representative or an advocate and appointment of such is done in the same manner as in the Civil Procedure Code.

The Constitutional Tssets is accessible not just for Mongolian Nationals, but to foreign nationals and stateless persons legally residing in Mongolia as well by submitting complaints, pleas and informing. Tssets is entitled to provide translation to a petitioning foreigner or non-Mongolian speaking person in his/her mother language or any other well-known language. The costs related to proceedings such as witnesses, expert witnesses, professionals and translation and any other necessary expenses is provided from the state budget.

Administrative cases.

Article 16 of the Constitution of Mongolia declares, “Citizen has rights to complain to state agency or officials for review. The state agency or officials shall address the complaint or request in lawful manners” and these activities have been regulated by Law on Addressing the Citizen’s Complaints and Requests to the State Agencies and Officials” (1995) and the sanctions for the administrative violations by the Law on Administrative Liability (1992).

During 1996-2000 office term of the State Great Hural, out of requests and complaints it had received from approximately 6400 persons (approx. 1600 per year) 38.6% were requests for “loan, financial and material aid to improve the living”. The majority of the complaints were against “state agencies unable to protect basic individual rights” and the fact that there is no judicial protection mechanism from the abuse of officials and administrative agencies which is the main obstacle in protecting the rights of the citizen”⁷.

An advocate is expected to intervene to protect basic human rights before they are violated by administrative agencies or officials due to administrative violations, provide legal assistance for restitution of violated rights and the offender is entitled for legal assistance (Law on Administrative Liability, Article 9).

Subparagraphs 13.5 and 19.1 of the Law on Administrative Liability requires duty of informing the family and advocate of the administrative offender detained of his/her location of detention, responsible official and the offender, victim or their legal representatives or advocate may appeal against the decision on administrative violation.

There is no law or regulation providing legal aid including free legal aid for the indigent in administrative proceedings.

Although the regulation on “Covering the lawyer’s fees of the indigent from the budget and its accounting practices” is to stipulate the provision of legal aid to the indigent, there is no clear data on how the indigent obtains legal aid and representation in administrative cases.

⁷ Human Rights Assessment report in Mongolia UB, 2001

International Law

So far no complaints regarding disputes or cases involving individuals or entities have been brought to any international organizations. But there is Human Rights Forum that unites 32 non-government organizations working for human rights, although not so long in existence. It is organizing a human rights action around a case related to Mr Erdene-Ochir of Zavkhan, having set up a working group led by the Pro-legal Reform Lawyers' Center in order to bring the matter to the United Nations Human Rights Committee, because it believes that violated are such rights of the person as the right to personal security, the right to equal access to justice, and the right to fair trial. This is the first time that non-government organizations in Mongolia have attempted to receive assistance from international organizations in reaction to human rights violations. The entire endeavor is based on volunteerism and all the participating lawyers and human rights activists are contributing their time for free.

ORGANIZATIONAL STRUCTURE PROVIDING FREE LEGAL ASSISTANCE

Central Government Agency on legal affairs (Ministry of Justice and Home Affairs), judiciary and law enforcement organizations render the following types of legal services to citizens and economic entities according to their basic functions:

1. Disseminate and explain legislation
2. Ensure and protect human rights and freedoms

Legal organizations conduct legal education and information activities on the Constitution of Mongolia and other laws according to their organizational specifics:

The Ministry of Justice and Home Affairs, as the central state agency on legal affairs, is in charge of compiling a database and registry of legislation, providing citizens with information, responding to their inquiries, popularizing legislation through mass media, explaining law, compiling and publishing brochures containing texts of laws, and conducting distance training through its information, monitoring and evaluation office.

Local agencies under the Ministry of Justice and Home Affairs, Supreme Court, State Prosecutor's Office, General Police Department have a duty to organize legal education and information activities in cooperation with each other.

Activities of organization in charge of ensuring that citizens enjoy their right to represent themselves and/or access legal assistance are not consistent. In particular, the Mongolian Association of Advocates and its aimag and capital city counsels have a fundamental duty to ensure an advocate's participation in inquiry, investigation and court proceedings from the very beginning. The advocate has a duty to perform all actions within the limits of law in order to prove the innocence of the suspect, the accused and the defendant or lighten the penalty of their client.

Inquiry and investigation organization, prosecutor and the court have a legal duty to provide assistance to the suspect, the accused and the defendant to ensure that the individual enjoys his or her right to freely choose and advocate, represent him or herself be represented by an advocate at all stages of criminal prosecution.

Government administrative agency organization in charge of advocacy

First Mongolian legal organization was established in July 1921 as People's Justice Ministry and in 1923-1924 complaint-revolving Divisions was established within this ministry. The ministry was responsible for central and local government legal organizations. Originated from this ministry the court was established in 1926, and prosecutor's office was established in 1930. Advocates organization was established in 1928 as "Group to provide assistance in trial" as a division in the Ministry of People's Justice.

Although the Ministry was changed the names and structure at times (later it was called Court ministry), within the ministry there was always existence of legal assistance division or group. Now one officer responsible for advocate's organization is working in Legal policy regulation department of the Ministry of Justice and Home affairs. This presents the evidence that government taken into consideration of the importance of providing legal assistance to its citizens. In May 1934, Meeting of Minister's Council of People's Republic of Mongolia established Mongolian advocate's colleague and adopted its rule. The court ministry had the responsibility of administering and managing the advocate's colleague's activities. Amendments made to the Rule of advocates organization in 1952, in 1965 and in 1978.

1986 Decree # 127 of Representatives of People's Great Hural adopted Law of People's Republic of Mongolia on advocate's organization and the objectives and activities of this organization were first time legally regulated by law. The law on advocates association adopted by the State Great Hural in 1994 was different from the previous one because it regulated rights and responsibilities of advocates and advocates organization play in democratic society in market economy.

Authority of public administrative organization was made clear regarding legal assistance in the Law on advocates association. This law regulated that the Government member on legal affairs (the minister of Justice and home affairs) has the following authority:

- In accordance with Article 8, the minister shall establish a professional in-formal committee on selection of advocates, it's members and approve the rule of procedure
- According to Article 9, the minister issues the license to Mongolian citizens who applied for becoming advocate and passed the advocates test
- Suspend and free the advocate from it's advocates activities in accordance with Article 10
- When the Advocates disciplinary committee finds advocate guilty for breaching legal and advocates ethical rules, the minister terminates the advocates license to practice law (Article 11)
- The minister shall approve Rule of advocates disciplinary committee and procedure on disciplinary penalty.

Although the Member of government on legal affairs approves the final decision on issuing, suspending and terminating advocates license to practice law, in actuality, the Ministry of Justice and home affairs, it's local organizations (legal departments of capital city and aimag governor's offices' administration) are not involved in appointing and assisting in choice of advocates in criminal investigation and court proceedings and they are not directly involved in supervising and monitoring the actions of advocates and capital city and aimag advocates councils.

However, the Law on government says that one of the activities of the Minister of Justice and home affairs is to communicate and work closely with courts, prosecutors and notary offices and advocates association. Within the framework of this activity, government resolution # 51 "Program of strategic activates and organizational structural changes of the Ministry of Justice and home affairs" was adopted in 20001. In 3.4 of this action program articulated that one of the main objectives of this program is to ensure the successful cooperation of local activities between courts, prosecutors, notary and advocates organizations and for the Ministry of Justice and home affairs it is considered to be very important issue.

Article 6.2 of the Law on advocates association states that " based on the proposal made by the Advocates association, the Government members on legal, population policy and labor affairs, shall issue joint resolution on establishing standard fees for providing legal assistance." In accordance with this provision of the law the "Joint resolution on establishing standard fees for providing legal assistance" was issued in 1995 by joint decree of Ministry of Justice and Ministry of Demographic policy and Labor.

Currently the advocates working in rural areas are using this standard to get their payments for providing legal assistance to citizens. In urban areas it is a different story. Most of the time advocates negotiate their legal fees with their clients. Therefore, these standard fees are not being used at all. From the side it is justified because these standard fees are way too low for advocates earning in market economy. The minimum fee established in the resolution is USD 3 and the maximum fee is USD 11 for the whole service in the case.

Since the Article 16.3 of the Law on Advocates association gave the privilege to advocates that if they are able to negotiate the fees with their clients for legal service, they can minimize and maximize the standard fees, no the Ministry of Justice and Home Affairs neither the Association of Mongolian advocates monitor the use of the standard fees by advocates. However, the local tax authorities use these standard fees in order to establish advocates' annual income.

The Ministry of Justice and Home affairs does not participate in execution of budget Mongolian association of advocates and it's spending. Mongolian Association of advocate's Monitoring committee was established for three years term in accordance with Article 11 of the bylaw of Advocates association. This Monitoring committee must monitor the financial situation, income, spending and expenses and to submit the findings to the Steering Committee of the Advocates association. Disappointingly, this committee does not function at all.

The role of the Mongolian Advocates Association in Legal Assistance System

Section 1 of Article 6 of the Law on Advocacy (Law on Legal Defense), adopted in 1994, and states the following:

“The advocates’ organization shall be a membership-based non-profit, non-governmental organization that consists of:

1. The Mongolian Association of Advocates
2. Aimag and Capital City Counsels.”

Article 5 of the same law states that “The Association of Advocates shall provide unified professional and methodological guidance, organize training and re-training for advocates, protect and represent advocates’ rights and interests vis-à-vis governmental and non-governmental organizations, and contribute to the resolution of advocates’ social issues.”

Currently, the Mongolian Association of Advocates has 416 member advocates and there are 22 aimag and capital city Counsels of Advocates operating as it branches.

Section 4 of Article 6 of the Law on Advocacy states that “Any citizen of Mongolia who has obtained a license to practice advocacy can be a member of the Association regardless of the type of the legal service they are providing to citizens.” Such a lawyer may be engaged in the following types of legal assistance as stated in Article 4 of the same law:

1. Providing legal counseling and information on law-related issues
2. Assisting in drafting of legal documents
3. Representing clients in the court of law or vis-à-vis state agencies on civil and administrative cases
4. Participating as an advocate in inquiry, investigation and court proceedings on criminal cases
5. Rendering other legal services to citizens and organizations upon the latter’s requests within the limits of the law.

Section 1 of Article 7 of the Law on Advocacy states that “a citizen of Mongolia who is a lawyer by profession, does not have prior conviction, has fulfilled professional requirements for a defense attorney, has obtained a license to practice advocacy having gone through established examinations,

may work as an advocate.” The Section “c” of Article 16 of the Bylaws of the Mongolian Association of Advocates’ states that “a lawyer who has successfully completed established examinations and obtained a license to practice advocacy as well as has registered as a member of the Association of Advocates and obtained a membership card, shall be called an advocate.”

The advocate shall work according to the rights and responsibilities of an advocate stated in the Law on Advocacy, Criminal Procedure Code and other legislation. However, the exercise of the rights and responsibilities of the advocate depends to a significant degree on the exercise of the rights and responsibilities of other subjects involved in criminal and civil procedures.

Advocates responsible for upholding the legal right of a citizen to receive legal protection must consistently protect the rights and interests of the suspect, the accused, and the defendant; not only provide them with legal assistance but also carefully and objectively study and analyze their cases; monitor and assist the investigation process to ensure its consistency with the law; and strictly abide by the law and ethical standards in his or her own actions.

The advocate must not perform any action that may be used against the suspect, the accused, and the defendant, or bring up evidence to prove their client’s guilt or aggravate the latter’s case because the inquiry and investigation authorities have been invested by the law with full responsibility and power to reveal a case and gather evidence to prove guilt.

Each participant in the criminal procedure – the inquiry and investigation officer, the prosecutor and the advocate, - has his or her own unique duty stated by the law aside from having a common goal of solving criminal cases. The advocate’s unique role is to conduct activities solely aimed at protecting the rights and interests of the suspect, the accused and the defendant. In other words, the advocate participating in the criminal procedure must solely direct his or her actions to protecting the suspect, the accused and the defendant, without directly or indirectly supporting any accusations against their client. Therein lays the significance and uniqueness of the duty of the advocate. The advocate has been given a right to render legal protection but not to prosecute.

Section 1 of Article 14 of the Law on Advocacy prohibits any interference with the work of the advocate by pressuring or threatening the advocate, demanding that he or she give up any evidence, or causing obstacles to his or her normal course of work.

The right to legal protection is one of the basic principles of the Criminal Procedure Code and serves as an assurance for the implementation of the right to enjoy the rights guaranteed by the law.

According to Section 3 of Article 6 of the Law on Advocacy, the Association of Advocates, the Counsels, and the Bureau, shall enjoy the rights of a legal entity and shall work based on the principle of self-financing. Advocacy and other legal assistance shall be rendered on a paid-for basis and these payments shall form the basis of the advocate’s income.

According to Section 4 of Article 16 of the Law on Advocacy, 6% of the advocate’s income is to be taken by the Association of Advocates whereas 4% of the income is to be contributed to the Advocate’s Responsibility Insurance Fund. However, this provision of the law proved unrealistic and was not implemented in practice. Therefore, the Bylaws of the Mongolian Association of Advocates, approved on June 27, 1997, at the Association’s general assembly, were amended to address this issue. In particular, section “c” of Article 16 of the Bylaws states that “advocates working in Ulaanbaatar shall pay a monthly membership fee amounting to 7,000 TG, advocates working in Darkhan-Uul and Orkhon aimags shall pay 6,000 TG, and advocates working in other aimags shall pay 5,000 TG to the Mongolian Association of Advocates.”

Section “a” of Article 27 of the Bylaws states that 20% of the membership fees shall be contributed to the Advocates’ Responsibility Insurance Fund. However, these resources have so far been spent on administrative expenses of the Association such as rent and salaries. At the same time, no effective

measures have been taken to develop regulations for financing aimag and capital city counsels and establish a salary system for aimag counsel heads, as the Bylaws had required.

In sum, the Mongolian Association of Advocates has become an organization that does not more than collecting membership fees on a monthly basis. They do not organize re-training programs to improve advocates' professional and theoretical skills, nor do they take any substantial measures to improve ethical standards of the advocates. Furthermore, the Association does not openly account for its finances and how it spends the resources accumulated from monthly fees.

The Role of the Court in Providing Legal Assistance

The courts are spread evenly in Mongolia throughout the country. There are 60 courts in the country-21 courts in the aimags, 22 in the capital city, 29 in soums including intersoum courts, 8 district courts and a Supreme Court.

Nevertheless, courts abuse the justice by "sitting" on the pleas, redirecting disputes to other organizations, executing wrong decision-making etc. Out of the 3533 cases remained in 2000, 430 were past the deadline set by the law for adjudication. Many of the judges have no experience and training on new laws and disputes, and suffer from excessive caseload. For example, in year 2000, average judge of the first instance court had 237 civil and criminal cases.

"There were public discussions and criticism towards judges, some of which were even serious and were supported by evidences. According to the joint survey by the Government of Mongolia and UNDP on "Public opinion on corruption in Mongolia" the three most corrupt organizations are Customs Department (73.5%), banks (63.8%) and courts (48.8%). Although the figures were not checked over, it is clear that the courts have been losing public trust. 5 judges were suspended due to repeated unethical behavior, 24 judges were subject to disciplinary measures, the General Council of Courts requested suspension of 8 judges due to failures in the proceeding and criminal actions."⁸

Summing up the above, it is difficult to say that the indigent has a good access to justice while the courts diminish the rights by taking longer time for hearing, awarding wrong judgments, show favor to connections and provide poor quality civil proceeding.

In a sense, assistance to an indigent client is a social duty of an advocate in consistence with the notions of social justice and human rights. There needs training about efficient and cost effective legal aid to the indigent. All the respondent advocates answered no to a poll question "Were there any training seminars on delivering free legal assistance to the indigent?"

Since its establishment in 1926 as separate institution from the Justice Ministry, the court has played an important role in the system of providing legal assistance to citizens and legal entities. Section 2 of Article 3 of the Law on Courts states that "the Court is the guarantee of human rights, freedom, justice and the rule of law." The advocate is one of the key subjects invested with the duty to uphold human rights and freedoms. It is possible to argue that the degree to which human rights have been protected depends on at what stage an advocate started to participate in the court proceedings.

Criminal and civil cases in first and appellate instances are conducted on the basis of adversarial principle. At those stages, it shall be seen to what extent the right to legal assistance has been ensured and that shall be reflected in the court ruling as a final result. Otherwise, there is no system of evaluating the quality of legal assistance provided to citizens.

⁸ Human Rights assessment in Mongolia UB., 2001, p. 96

Article 15 of the same law states that “court proceedings shall be conducted on the basis of adversarial principle. In criminal cases, the prosecutor, the defendant and his or her advocate; in civil cases, the parties and their advocates and other participants shall argue their cases providing supporting evidence.” This means that by law it is required that an advocate participate in court proceedings.

In addition, Section 1 of Article 20 of the same law states the following on the exercise of the right to legal assistance and the right to provide legal assistance: “any defendant or any person asking for legal protection in court has a right to him or herself, to choose their advocate freely, to familiarize themselves with the documents and evidence related to the case, and to participate in court proceedings in person. If not otherwise stated in the law, the defendant must be present in court trials in person.” The Court assumes duty for ensuring that these individuals are able to exercise above rights.

This Law contains clear provisions on legal representation as well. Section 2 of Article 32 of the Civil Procedure Code states that “the advocate, when representing citizens and other legal entities based on contract, has a right to use all means in accordance with the law to protect the rights and interests of their clients before the law and court and to provide necessary legal assistance in establishing the objective picture of the case.” Furthermore, Section 3 of Article 34 states, “the power and authority of the advocate shall be based on the document provided by an authorized organization (the client).”

The court does not participate either in appointing the advocate or in monitoring the quality of legal and advocacy services provided by advocates. The Law on Courts does not contain special provision on this particular issue.

As the Criminal Procedure Code (Article 47) contains a list of cases wherein an advocate must participate, judges pay considerable attention to legal protection in criminal cases. However, there are many cases when citizens are not provided with legal assistance during inquiry and investigation stages and are only represented in court proceedings by an advocate who is not familiar with his or her case. Such situations result in poor legal protection in court.

In the case of civil cases, the exercise of the right to legal protection in court is different. There are no legal requirements that an advocate necessarily participate in civil cases. In addition, there are no guarantees for poor individuals to obtain legal service in civil cases. Hence, they are not able to enjoy their right to fair trial.

The Role of the Police and Prosecutor’s Office in the Legal Assistance System

Section 1 of Article 3 of the Law on Police states that “respecting for law and justice, ensuring equality, human rights and freedoms are the basic principle of the police operations.” However, the human rights and freedoms that form the basis of the above principle are not respected during inquiry and investigation stages. In particular, according to Article 45 of the Criminal Procedure Code, “an advocate has a right to participate in inquiry and investigation procedures starting with the temporary detention of the suspect and the process of interrogation.” However, there are reasons to maintain that the police do not pay adequate attention to the exercise of this right. Article 5 of the Law on Advocacy requires that police, court and prosecutor’s office provide citizens with names and addresses of professional advocates and advocates’ organizations when the former request legal assistance. Regrettably, these organizations have poorly fulfilled there above duty and do not provide citizens with the possibility of accessing legal assistance.

This can be seen in particular from the fact that none of the 51 detainees held at the temporary detention center of the Bayanzrukh district police on April 9, 2002, had received legal assistance. Furthermore, 27% or 524 detainees out of a total of 1,967 detainees held at the same center in April, were interrogated without an advocate. This is only one example of how the police violate human rights.

According to Article 2 of the Law on Prosecutor's Office, the Prosecutor's Office of Mongolia is in charge of monitoring inquiry, investigation and execution of sentencing, and representing the State in the court of law. In monitoring inquiry and investigation processes, the prosecutor must clarify why an individual was not provided with an advocate and why the police did not provide the individual with a possibility of accessing legal assistance. There is no provision in the law that demands that an advocate participate during inquiry and investigation and holds accountable the guilty party in case there was a failure to ensure an advocate's participation. This makes it difficult to hold the prosecutor's office accountable for failures to provide individuals with legal assistance during inquiry and investigation stages. However, it must be remembered that Article 20 of the Criminal Procedure Code states that "in the event if the right to legal assistance of the suspect, the accused and the defendant was violated, this can serve as a basis for annulling the court ruling."

Today, citizens mainly regard the prosecutor's office as a body that accuses and convicts citizens for crime and the prosecutor's office itself mainly maintains this line of duty. The citizens are not aware that the prosecutor's office is the main authority that is in charge of monitoring criminal proceedings, in particular, inquiry and investigation, to ensure their compliance with the law and those human rights are not violated during these stages. Hence, citizens do not issue complaints to the prosecutor's office related to human rights violations during inquiry and investigation.

On the other hand, citizens do not trust the prosecutor's office as they see it as an organization that, together with the police, violates human rights itself and only serves the interests of the rich.

Finance

In 1995, "Regulations on Financing and Accounting of Expenses for Legal Services for the Poor from the State Budget" were developed in accordance with Article 20 of the Law on Courts and Article 17 of the Law on Advocacy and approved by the joint order 43/76/62 of the Minister of Justice, the Minister of Finance and the Minister of Population Policy and Labor. However, this research revealed that aimag and capital city courts and advocates' counsels do not make any effort to implement these regulations and the resources budgeted for legal services to the poor do not reach their target, namely, the advocates.

Before 2001, the funds for legal services to the poor were allocated to the courts. However, based on the assessment of the current inadequate implementation of the above regulations, the funds were shifted to the Ministry of Justice and Home Affairs in order to improve the current situation. Unfortunately, due to the lack of initiative on the part of the Mongolian Association of Advocates, the funds were not claimed in 2001 and remained unused.

Currently, 9 million TG have been budgeted for legal services to the poor. However, the funds still have not been used. Although there has been initiative to solve this problem, the situation persists purely due to mismanagement.

Non-Governmental Mechanisms

1. Legal Clinic:

Legal clinics named "Khumuunleg" and "Buyan" have been set up at the Law School of the Mongolian State University and the Shikhikhutug Law School respectively with the support of the Mongolian Foundation for Open Society (Soros Foundation) and have been providing some legal assistance to poor citizens. As the clinics are a part of the training process for students, it is impossible to evaluate the services they provide to citizens – legal counseling, representing poor citizens in front of the law and court – by the same professional criteria that professional organizations are assessed by.

Also, the legal representation and other services students render are fairly limited in scope. In particular, they do not have a possibility to participate independently in court proceedings representing their client.

If the clinics were set up under an NGO that is addressed by the most number of citizens for advice and assistance, the activities of the clinics may have been more effective and more accessible. However, as the current clinics are set up at universities and are run under the guidance of teachers as a form of training, their services for the poor are limited. However, lack of advertisement and promotion of these clinics may account for the fact that not only citizens but even legal organizations are not aware that such services exist and, hence, the lack of access to the clinics.

2. Non-Governmental Organizations:

Currently, there are no NGOs that specialize in providing the suspect, the accused and the defendant in civil and criminal cases with professional legal assistance aside from the advocates. However, there are NGOs that work in specific areas of law such as the Lawyers' Center for Support of Legal Reform, Liberty Center, Human Rights and Development Center, National Center Against Violence, Globe International, National CEDAW Watch Network Center, Women Lawyers' Association as well as other organizations such as the Trade Union and Consumer Protection Association, which provide citizens and organizations with free legal counseling, organize professional training for lawyers, and publish newspapers, magazines, brochures and manuals. Most of these organizations provide citizens with free legal assistance, professional counseling and information on a voluntary basis using their own resources. Very few of these organizations run such activities within a project framework.

Section 2 of Article 6 of the Law on Advocacy states that "an advocate may run an advocacy bureau" and Section 3 of the same article determines that "the Advocates' Association, Counsels and Bureaus shall enjoy the status of a legal entity and shall operate on the basis of self-financing." According to these provisions, there are 57 urban and rural legal bureaus established between April 3 of 1998 and May 13 of 2002 that have been registered with the Ministry of Justice and Home Affairs according to Article 15 of the Law on Non-Governmental Organizations. In addition, there are 25 legal bureaus that had been established prior to 1997 but haven't been included in the revised registry of the Ministry of Justice and Home Affairs. Altogether, currently there are 82 legal bureaus serving citizens and organizations. As legal bureaus work based on the principle of self-financing, they provide paid services to citizens and organizations.

The NGO Lawyers' Center for Legal Reform runs a TV program that critiques the current system of legal assistance and introduces various suggestions for improvement, publishes free newsletters for lawyers, and attempts to influence their work by providing information on the role the law plays in protecting human rights. It is highly commendable that this Center is, on a voluntary basis, providing legal assistance and emotional support to citizens whose rights have been violated, writes complaints to relevant authorities and legal organizations and publicizes violations through mass media in order to educate the public and legal professionals. Because the Center broadcasts a legal education program on TV, citizens are addressing the Center in large numbers, which shows the importance of information for the protection of human rights.

FUNDING A FREE LEGAL ASSISTANCE

The statement that "the State shall provide assistance to defendants who are unable to pay for an advocate's services" contained in Section 3 of Article 20 of the Law on Courts was further elaborated in the Law on Advocacy. For example, Article 17 of this Law states that "advocates' fees shall be financed from the State budget for a person who is unable to pay for legal assistance. The regulations on how to finance and account for such payments shall be developed jointly by the Members of the Cabinet in charge of Justice, Finance, Demographic Policy and Labor based on recommendations from the General Council of Courts and the Mongolian Association of Advocates.

Based on this provision of the law, the Ministers of Justice, Finance, and Demographic Policy and Labor issued a Regulation on State-financing and Accounting of Legal Assistance Fees for the Poor by a joint order 43/76/62 of 1995. However, the regulation has not been implemented in practice and there has been no effective oversight of its implementation so far.

According to this regulation, funds for covering legal service fees for the poor were allocated through the General Council of Courts and aimag and capital city courts. However, as neither aimag and capital city courts nor the advocates' counsels have not shown any initiative to follow the regulations and aimag and capital city financial departments have not monitoring the use of the specified funds, these resources have not reached their intended targets, i.e. advocates. This situation has been criticized for many years now.

Furthermore, when issuing payments for legal services to the poor, the inquiry and investigation officer and judges have been filling out a form at every stage of the prosecution process based on their respective decisions. Because state-financed payments are thus determined by different authorities and involve several stages, for years it has been difficult for the advocate to collect his or her service fees.

Because the process of claiming and issuing such funds involve a lot of paperwork and legwork to contact the various officials in charge at various stages of the process, the advocate has to spend a lot of time trying to get the money. Even when all the paperwork seems to be in place, very often it is returned as not fulfilling certain financial requirements. Thus, when the first 2-3 quarters come to pass, the court secretariat simply spends the specified funds for other purposes and empties the budget line for covering legal service fees for the poor. Thus, every year, these funds do not reach their target but get spent according to the discretion of the court secretariat.

Finally, advocates and advocates' counsels do not compile documentation related to legal assistance provided to the poor in a timely fashion and often retrospectively compile necessary paperwork of dubious quality, which exacerbates the already inadequate situation. Thus lack of responsibility on both sides is hindering the provision of legal services to the poor.

Let us take a look at the allocation and spending of funds for legal services for the poor for the period of 1997-2000.

No.	Year	Approved budget (in thousand TG)	Spending (in thousand TG)	Balance (in per cent)	Balance (in per cent)
1	1997	4,000.0	1,362.4	2,637.6	65.9
2	1998	2,000.0	1,199.5	800.5	40.0
3	1999	7,000.0	1,112.5	5,887.5	84.1
4	2000	6,525.0	(I quarter) 292.7	6,232.3	95.5
		19,575.0	3,967.1	15,557.9	79.6

The following table shows the number of civil and criminal cases in which the advocates represented citizens of low income:

Question	2000	2001	2002 first half	Total
1. Total number of poor citizens represented by the advocate	1,691	1,946	1,025	4,662
Criminal	1,478	1,663	890	4,031
Civil	176	226	126	528
Other	37	57	9	103
2. Did not collect payment for the services	1,469 (31,270.6)	1,741 (33,542.4)	918 (21,195.4)	4,128 (86,008.4)

3. Number of clients who did not pay for the advocate's services	1,637	1,830	1,046	4,513
Under the poverty line	773	894	554	2,221
Very poor	621	686	364	1,671
Prisoners	243	250	128	621

As payments for legal assistance to the poor are not reaching the advocates, the advocates refuse to serve poor citizens. Hence, the human rights and interests of poor citizens are grossly violated.

Therefore, the current heavily bureaucratic procedure of issuing advocate's fees has been reformed in 2001 so as to allocate the funds to the Mongolian Association of Advocates through the Ministry of Justice and Home Affairs and establish continuous monitoring of the use of these funds. However, as the Mongolian Association of Advocates failed to renew their own regulations to bring it in line with the new procedure, the funds remained unspent in 2001. With the adoption of the revised Law on Advocacy in May of 2002 by the State Great Khural, the administration and use of these payments has been codified in the law. Currently, there are 9 million TG included in the budget of the Ministry of Justice and Home Affairs for covering legal assistance fees for poor citizens.

The Mongolian Association of Advocates has not done any work towards compiling necessary documentation to claim these funds and to disburse them to relevant advocates. It is indeed surprising that the Association has done nothing in this regard even as the year 2002 is approaching its end. This is despite the fact that we have held meetings with the leadership of the association and reminded them of their duties.

The head of the capital city advocates' counsel said that the counsel will claim funds from the 9 million allocated by the Ministry of Justice and Home Affairs towards the end of this year and distribute them according to the established tariffs.

However, let's take a look at the tariffs established by the 1995 joint order of the Minister of Justice and Minister of Population Policy and Labor:

- Up to 3,500 TG for defending a person involved in a minor criminal case
- Up to 6,000 TG for defending a person involved in a less serious criminal case
- Up to 8,000 TG for defending a person involved in a serious criminal case
- Up to 12,000 TG for defending a person involved in a grave criminal case

How realistic are these amounts? The question arises if this pricing system is just to advocates rendering services to poor citizens in a situation where advocates charge, on the basis of negotiation and agreement with their clients, 10-30 of the total costs or 30-70 USD an hour. When we posed this question to leaders of advocates' organizations, they responded that they will follow the official tariff stating that it is difficult for advocates to work for free; hence even 5,000 TG would make some difference.

The Mongolian Association of Advocates seems to receive many poor citizens requesting legal assistance. Homeless people, people with no defined address, and citizens who just came out of penitentiaries practically have no access to legal assistance. That is because they do not have an address, they cannot obtain a referral from a governor of a given locality.

Citizens in rural areas have several times greater difficulties in accessing legal assistance than urban dwellers. This is clear from the fact that on the average, there are only 2 advocates aimag-wide and not a single tugrig has reached aimag counsels in the last 2 years. Meanwhile, a considerable number of arguments keep arising with regard to payments of legal service fees for the poor and advocates end up

losing. For example, in March of 2002, we studied a file related to a payment of fees for legal service to a poor citizen. The aimag financial department reviewed financial documents of the aimag court secretariat and issued an order that stated the following: “as a violation was revealed whereby the aimag advocates’ counsel was not reimbursed for the legal services (to poor citizens) rendered in 2000, the chair and accountant of the aimag court secretariat are hereby ordered to transfer 197,000 TGS to the account 2148073 of the aimag advocates’ counsel at the branch of the Trade and Development Bank by April 1, 2002.” Although every aimag has such documents, because the local financial departments do not effectively monitor spending of funds designated for covering legal service fees for poor citizens, it is impossible to estimate the total costs involved here.

Although the advocate and the client agree on the amount of the fee based on mutual negotiations, in rural areas, due to the lack of cash, there are many cases when the client signs a binding document agreeing to make in-kind payments or pay retrospectively and later fails to make those payments or deposits a passport or other documents with the advocate as a guarantee of future payment and never returns to collect those documents or to pay the advocate. The aimag counsel does not have any means to effectively address this situation and most advocates leave such cases deeming it inappropriate to take to court a former client in an attempt to collect their service fees. In addition, the number of citizens unable to pay for legal services is on the rise due to the deterioration of living standards.

This research also showed that there are no figures that would show what percentage of the funds for free legal assistance to the poor were budgeted for criminal cases, what percentages were for civil cases, and what percentage were for emergency assistance. As the initial funds were not broken down into such budget items, it was impossible to make the assessment according to those categories.

The General Council of Courts has provided the allocations of funds authorized by the General Council of Courts to aimag and capital city courts for covering payments for legal assistance rendered to the poor and their spending for this document. The figures are shown in page 24 of this document.

AVAILABILITY OF ADVOCATES AND QUALITY OF A LEGAL ASSISTANCE

According to statistics, there are 400 active advocates in the country in 21 councils and 42 law offices. Due to high concentration of legal professionals in urban areas, there is great demand for advocates of labor age in the rural areas. For example, in entire Bulgan aimag, there are two advocates, one has been disbarred (but later restored), and two apprenticeship advocates, all of ages between 40 and 60.

For the past 6 years no qualification exams were held for aspiring advocates at all in Mongolia. This was adversely impacted a growth of advocacy in Mongolia, which consequently affects availability of advocates for those who need legal advocate’s assistance. Especially, in the countryside, one aimag on average would have 2-3 advocates all in all. This raises serious problems with the right to advocate in the countryside.

Quality of legal services delivered by some advocates could also have been higher. It is a popular claim that advocates sometimes get under influence of the opposing party or violate conflict of interest rules working both parties. The worst accusation against advocates is the claim by many that advocates are just a tool for bribing a law enforcement official or a judge.

It is hoped that Article 38.2 of the Criminal Procedure Code of Mongolia “Defendant him/herself may choose a person who does not have impediments to his/her participation in the proceeding as defense counsel” is a positive step forward to provide more access to legal assistance in remote areas with few advocates or in the case of absence of quality professional legal assistance.

It can be said that today in Mongolia there is not a satisfactory mechanism for assessing the professional performance of advocates, controlling the quality of their services, and monitoring their activities. The results of the examination of lawyers' activities in 2001 show that there were 41 advocates with poor performance and ethical misconduct, all of whom were imposed disciplinary actions. 6 were deprived of their license and 9 were warned of possible action of the same kind.

One of the basic methods is commencing a disciplinary case. But it is doubtful whether this mechanism is efficiently working.

If the advocate is delaying the settlement of the case, is not performing the mutually agreed duties without any justifiable reasons even when he/she has been paid the fee, has not attended the court session without good reasons, or has been late for the court session too many times, which means that he/she has not provided satisfactory legal aid, a client is entitled to complain to the President of the Association of Mongolian Advocates, the Disciplinary Board, or the Board of Advocates in aimags and the capital city.

In case the advocate was not able to provide adequate services, the client has a right to file a complaint with the aimag and capital city advocates' councils. The counsel has a duty to conduct and inspection after the complaint and if in case the counsel finds the advocate guilty, in accordance with Article 18 of the Law on Advocacy, it has a right to demand that the client be compensated for the damage incurred and, if the services agreed upon in the contract have not been delivered by the advocate, the client is to be reimbursed the full amount of the contracted payment. If an advocate repeatedly commits such a wrongdoing, he or she shall be referred to the Disciplinary Committee under the Mongolian Association of Advocates and, based on the Committee's conclusion, the Ministry of Justice and Home Affairs shall terminate the advocate's license.

In January, 2001 the "Code of Professional Ethics of Mongolian Advocates" (3 chapters, 20 articles) has been adopted by the Executive Board of the Association of Mongolian Advocates. The fundamental ethical norms of an advocate in this Code can be classified as follows:

1. Norms of communicating with colleagues;
2. Norms of communicating with clients;
3. Norms of communicating with investigative and detention institutions;
4. Norms of communicating with the court and participants in the court proceedings.

A complaint against an attorney who is considered as having violated the laws and regulations of Mongolia and/or the ethical standards of the profession is heard and resolved by the President of the Association of Mongolian Advocates, the Disciplinary Board, or advocates' councils in aimags and Ulaanbaatar, which are authorized to take a disciplinary action, within 30 days upon submission of such a complaint. The disciplinary actions that may be imposed on attorneys found in breach of ethical misconduct are as follows:

1. Warning
2. Warning that he/she may be deprived of the license of advocate
3. Deprivation of the license of advocate.

The President of the Association of Mongolian Advocates and the Disciplinary Board are authorized to take all the forms of disciplinary measure (submit a proposal to the Cabinet Member in charge of legal matters to revoke the attorney's license temporarily or permanently) while the chairmen of the Advocates' councils in aimags and Ulaanbaatar may use all the disciplinary actions except for revocation of the attorney's license.

It is clear that disciplinary actions do not provide a sufficient controlling mechanism to guarantee the right to advocate. Then other alternative should be sought.

LEGAL AID TO THE VULNERABLE GROUPS AND WOMEN

The difficulties related with ensuring human rights are universal, while certain vulnerable groups suffer the most, thus not fully enjoying their constitutional rights and freedoms.

According to National Statistics Department, 36.6% of the population was below the poverty line in 1998 and single mothers are most likely to be in the number. Also, out of crimes committed in homes 20, 6% in 1998 and 25, 2% in 2000 were domestic violence cases, mostly against women.

According to the research by the Ministry of Health and Social Welfare in 1998, there are 115,000 disabled in Mongolia out of which 20,900 are mentally ill, 6,500 – with speech or hearing impairment, 28,000 are physically impaired and 42,000 are disabled otherwise.

There are not adequate legal regulations or guarantees, which provide free legal aid to vulnerable groups. National Center against Violence and other active women non-government organizations have prepared a law draft against domestic violence; however, it has not reached a certain result at the moment.

The main organization that provides aid to the victims of domestic violence is the National Center against Violence. This Center, through its advocates and other volunteer women lawyers, gives consultation and represents in legal proceedings victims of domestic violence. Women Lawyers' Association, another NGO, operates a center for providing aid to the victims of domestic violence. Also, NGOs like the National Center of the Convention of Eliminating all kinds of Gender Violence, Human Rights and Development Center, Center for disabled Women's rights have been doing active work in eliminating other kinds of violence and abuse against women. At the moment there has been no particular suit filed for protection of the violated rights due to the victims' unwillingness to be exposed to the public from the fear of social pressure on one hand, on the other hand, there are not enough specialized advocates on women issues. However, these organizations provide women with the free legal consultation and counseling support, thus easing the burden of the state by helping citizens.

In many other countries there operate legal aid clinics run by special advocacy programs, NGOs and law schools that offer pro bono legal assistance to victims of domestic violence. Similar programs in Mongolia need supporting by the state institutions as well as possibly donor projects.

CONCLUSION & RECOMMENDATIONS

Access to justice for poor citizens unable to pay for legal assistance is indeed one of the key issues in terms of ensuring human rights in Mongolia.

Whether or not poor, low income and non-solvent citizens are able to enjoy their constitutional rights such as filing a complaint with the court, to receive compensation for damage incurred to them by others' illegal actions, refusing to testify against oneself or one's own family member (parents or children), reviewing evidence, receiving fair trial, appealing a court decision, and requesting amnesty, depends on whether or not they are able to fully exercise their right to receive legal assistance. A litmus test for determining whether or not citizens are able to enjoy their right to receive legal assistance is whether poor citizens who are unable to pay for legal services are able to enjoy their right to receive legal assistance. Therefore, ensuring that poor citizens have access to free legal assistance would in turn ensure that other basic rights are upheld.

Although the citizens' right to receive legal assistance (advocacy) have been guaranteed by the Constitution of Mongolia, Criminal Code, Civil Code and the Criminal Procedure Code and the provision of free legal assistance to poor citizens have been legally codified, our research shows that the de facto provision of free legal assistance to the poor and the latter's ability to exercise their right to receive legal assistance are extremely insufficient. Hence, we draw a conclusion that the following changes need to be made de jure and de facto in order to improve the current situation:

1. *Currently, cases involving poor citizens need to be included in the list of cases that demand the participation of an advocate by law for cases of poor citizens are as vulnerable as cases wherein the defendant is likely to be exacted a capital punishment or cases of underage offenders, which are legally required to be considered with the participation of an advocate.*

Requiring legally that cases of poor citizens necessarily involve an advocate would mean that more advocates would participate in such cases, which would increase the likelihood of an organized pressure from advocates to improve the current system of payments from the state budget for legal services for the poor. This would be an important step towards ensuring the right of poor citizens to legal assistance not only in criminal cases but also in civil, administrative and constitutional cases. In general, the right of a poor citizen to legal assistance must be ensured at all stages of the prosecution process including inquiry, investigation, interrogation and court trials.

2. *The State has been paying attention to the issue of the provision of free legal assistance to poor citizens and has been allocating funds for this purpose. We have explained above that unfortunately these funds have not been able to reach their target due to the lack of initiative and management of organizations and officials in charge of the implementation. It is purely due to mismanagement, despite the fact that the issue has been addressed and regulated by the law, that the inadequate situation persists. The situation was the same when the courts were in charge of disbursing these funds and transferring the funds to the Ministry of Justice and Home Affairs has not made a difference. Given that no improvements have occurred in the last 2 years despite the fact that the law has been amended so as to eliminate bureaucratic hurdles by allocating the funds to the Mongolian Association of Advocates through the Ministry of Justice and Home Affairs, it is doubtful*

the situation would improve if the funds were allocated directly to the Mongolian Association of Advocates.

Therefore, we are of an opinion that a better method would be to appoint advocates with the status of a public or State advocate to urban and rural areas and finance their salaries from the State budget. This would not only promote competition among advocates but also ensure that the funds reach their target and that poor citizens gain access to free legal assistance. In many countries, public legal services co-exist with private legal services, which testifies to the fact that such a system is viable. This would be clear proof that the State pays adequate attention to upholding the right of its citizens to legal assistance. Such a method would reduce considerably various on-going arguments and conflicts among citizens and eliminate unnecessary bureaucracy described earlier in this report.

- 3. Establishing more legal clinics and expanding and improving their operations would make an important contribution to the solution of the issue at hand. But their operations need to be linked with NGOs that work at the grassroots and perhaps even setting up legal clinics at such NGOs would be a better approach.*
- 4. The State needs to develop a special policy aimed at eliminate the violation of rural citizens' rights to receive legal assistance by making a concerted effort to improve salaries and financing for rural advocates and taking other appropriate measures taking into account that rural citizens have extremely inadequate access to legal assistance due to the very low number of advocates working in rural areas.*

When we met with a number of prisoners at the pre-penitentiary detention center, one of them said, "I don't know that I have a right to an advocate. They had me meet with one advocate one hour before the trials." There were many prisoners who said the same thing. It is clear that the right to have an advocate is routinely violated during inquiry and investigation stages and it is easy to draw conclusions what the outcome of such a case would be in court proceedings. It is important to address the issue of a provision of legal assistance to poor citizens in a holistic manner. There is a dire need for programs that educate and inform citizens about their right to receive legal assistance and empower them to fight for their own rights and interests as well as for programs and actions that educate and encourage lawyers and advocates to take an active stand on these issues.

Finally, all participants in the prosecution process – inquiry and investigation officer, judge, prosecutor, advocate, - each have their own unique duty. It is only when each of them adequately and conscientiously fulfills his or her duty, upholds ethical standards, continuously heightens requirements for one's own performance, and strictly follows the law, that human rights shall be upheld and respected in practice.